

STATE OF UTAH INSURANCE DEPARTMENT

REPORT OF EXAMINATION

OF

**WESTERN NATIONAL TITLE INSURANCE COMPANY**

OF

Salt Lake City, Utah

As of December 31, 1999



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October 13, 2000

Honorable Merwin U. Stewart  
Insurance Commissioner  
State of Utah  
State Office Building, Room 3110  
Salt Lake City, Utah 84114-6901

Commissioner:

Pursuant to your instructions and in compliance with statutory requirements, an examination, as of December 31, 1999, has been made of the financial condition and business affairs of:

WESTERN NATIONAL TITLE INSURANCE COMPANY  
Salt Lake City, Utah

a title insurance company hereinafter referred to as the Company, and the following report of examination is respectfully submitted.

**SCOPE OF EXAMINATION**

Period Covered by Examination

A representative of the Utah Insurance Department last examined the Company as of December 31, 1995. The current examination covers the intervening period from January 1, 1996, through December 31, 1999, including any material transactions and/or events occurring subsequent to the examination date noted during the course of the examination.

Examination Procedure Employed

The examination included a general review and analysis of the Company's operations, the manner in which its business was conducted, and a determination of its financial condition as of December 31, 1999. The examination was conducted in accordance with generally accepted standards and procedures of regulatory authorities relating to such examinations.

Status of Prior Examination Findings

The prior examination report's disclosures of material adverse findings and other significant regulatory information were reviewed. As of the date of this examination report, all exceptions have been satisfied or received further disclosure in the appropriate section of this report.

## HISTORY

### General

A certificate of authority authorizing the Company to transact the business of title insurance, as defined in Utah Code Annotated (U.C.A.) § 31A-01-301(78), was issued by the Utah Insurance Department effective November 5, 1987.

There were no amendments to the Articles of Incorporation or the By-Laws during the years under review.

### Capital Stock

Article IV of the Articles of Incorporation stated the initial authorized capitalization at one million (1,000,000) shares of common stock having no par value. One hundred thousand three hundred fifty (100,350) shares of the stock were issued to William M. Wirthlin on November 5, 1987. The amount paid for the shares, \$1,003,500, served as the Company's initial capitalization. Mr. Wirthlin remains the sole owner of the Company.

The Company repurchased a major portion of its common stock from William M. Wirthlin as follows:

<u>Period</u>	<u>Number of Shares</u>	<u>Dollar Amount</u>
October 31, 1988	50,000	500,000
February 9, 1990	5,000	50,000
March 27, 1991	4,725	47,250
April 1, 1992	5,000	50,000
April 1, 1993	5,000	50,000
	<u>69,725</u>	<u>\$697,250</u>

The net capital stock outstanding was \$306,250 (\$1,003,500 - \$697,250) as of December 31, 1999.

### Dividends to Stockholders

The following dividend was declared payable and paid during the examination period by the Company's board of directors to Mr. William M. Wirthlin, the sole stockholder of the Company:

<u>Date Declared</u>	<u>Amount Paid</u>	<u>Date Paid</u>
March 27, 1996	\$35,000	April 15, 1996

The dividend paid was not considered extraordinary according to the definition found in U. C. A. § 31A-16-106(2).

### Management

According to Article III of the Company's by-laws, "the business and affairs of the corporation shall be managed by its board of directors. The number of directors of the corporation shall vary from not less than three (3) to a maximum of nine (9) directors as the Board may itself from time to time determine."

As of December 31, 1999, the Company's board of directors consisted of the following individuals who served during the period under examination:

<u>Name and Residence</u>	<u>Principal Occupation</u>
William M. Wirthlin Salt Lake City, Utah	President Western National Title Ins. Company Associated Title Company Associated Title Co. of Northern Utah Vice President Associated Escrow Company Western Land Holding Alliance Home Warranty
Raymond B. Whitney Sandy, Utah	Secretary/Treasurer Western National Title Ins. Company Associated Escrow Company Associated Title Co. of Northern Utah Alliance Home Warranty Senior VP Operations Associated Title Company

The Company was not in compliance with its own by-laws by having less than three members of its board of directors as of December 31, 1999.

Officers elected and appointed by the board of directors and serving at December 31, 1999, were as follows:

<u>Name</u>	<u>Office</u>
William M. Wirthlin	President/Director
Raymond B. Whitney	Secretary/Treasurer/Director

Article III (13) of the Company's by-laws states, "the board, by resolution, may designate from among its members an executive committee and other committees, each consisting of three or more directors." Minutes of executive committee meetings were not provided the examiner to evidence the functioning of the committees during the examination period.

### Conflict of Interest

The directors and officers of the Company completed conflict of interest forms on an annual basis.

### Corporate Records

The minutes of the board of directors and shareholders' meetings were reviewed. Meetings were held in March and November of each year under review except for fiscal year 1999. In general, the minutes adequately documented the Company's significant transactions and affairs for the three years under review. However, no directors' meetings were held in 1999, which was not in compliance with Article III (3) of the Company's by-laws. It was also noted that no evidence was provided by the Company indicating that the prior financial examination report had been presented to the board of directors as required by U.C.A. § 31A-2-204(8).

## **AFFILIATED COMPANIES**

### Affiliates

The Company is a member of a holding company system. Mr. William M. Wirthlin is the ultimate controlling person in the system. Following is a chart of other companies within the holding company system. Mr. Wirthlin's ownership in the companies is direct and the percent thereof is indicated in the chart:

<u>Company Name</u>	<u>Mr. Wirthlin's % of Ownership</u>
Associated Title Company	100
Associated Title Company of Davis County	100
Associated Escrow Company	100
Western Land Holdings	33
Western National Title Insurance Company	100
2DF Utah General Partnership	25
833 Utah Limited Partnership	49
Alliance Home Warranty	100
Mountain River Utah Limited Partnership	33
Apartment Partners LTD	23
Ponderosa Partners Utah Limited Partnership	47
Snow Creek LTD	25
9100 Partners	20
W. Meeks Investment Company	8
Layton Crossing	50

### Transactions with Affiliates

A management agreement between the Company and Associated Title Company (ATC) was in effect, executed since August 9, 1990. The affiliate agreed to provide the following services for a fixed fee including, but not limited to the following:

- i) Underwriting analysis and decisions, claims administration;
- ii) Title training for employees of both companies, marketing, accounting;
- iii) Legal consultation including coordination with outside counsel;
- iv) General management services, office space and equipment.

As of December 31, 1999, the Company paid \$3,500 per month in connection with this agreement. Effective as of January 1, 2000, the Management Agreement was modified to increase the fee to \$10,750 per month.

## **FIDELITY BOND AND OTHER INSURANCE**

The Company has a management contract with Associated Title Company, an affiliate, to perform its business operations. Employees of Associated Title who perform these administrative functions for the Company were not covered by fidelity bond coverage. The amount recommended by the National Association of Insurance Commissioners for an insurer of this size was between \$125,000 and \$150,000.

## **PENSION, STOCK OWNERSHIP AND INSURANCE PLANS**

Associated Title employees who were under contract with the Company, were given the opportunity to participate in a pension and/or stock ownership plans offered by (ATC) as follows:

- 401K Plan: - ATC offered a 401K Savings Plan to all regular full-time employees having attained a minimum age of twenty-one years of age and have completed one year of service.
- Profit Sharing: - ATC offered a Profit Sharing Plan for eligible employees having attained the minimum age of twenty-one and have completed one year of service. Associated Title Insurance Company, upon its own discretion, may contribute to the Plan for each eligible employee based upon the profitability of the Company.

## **STATUTORY DEPOSITS**

Utah Code Annotated (U.C.A.) § 31A-4-105 requires the Company to maintain a deposit in the amount of its required capital. According to U.C.A. § 31A-5-211(2), the Company's minimum capital requirement was \$200,000. The book and market values of the statutory deposits were \$200,000 and \$191,062 respectively.

The Company maintained a statutory deposit through the Utah Department of Insurance as of December 31, 1999, of \$200,000. Deposits were held in trust for the primary benefit of all policyholders in accordance with U.C.A. § 31A-2-206.

## **INSURANCE PRODUCTS AND RELATED PRACTICES**

### Policy Forms and Underwriting

The policy forms issued by the Company consisted primarily of an owner's policy of title insurance for residential property and a lender's policy of title insurance for second mortgages, refinancing, home equity loans, and first mortgages on existing structures. The Company issued a limited number of owners and lenders' policy of title insurance concerning new structures on residential property and to residential builders/developers. As of December 31, 1999, the Company also had underwritten limited amounts of commercial properties.

### Territory and Plan of Operation

The Company was authorized to conduct title insurance business in the State of Utah and did not operate in any other jurisdictions.

Most of the Company's business written during the period under review came from Associated Title Company and Associated Title Company of Davis County, affiliated agencies. The Company also had agreements with six other title insurance agencies during the period under examination. These agencies issued title policies on behalf of the Company.

### Advertising

The Company's marketing efforts relied heavily upon the agencies with which it contracted to sell its products. Most of its advertising was done by these agencies through direct contact with banks, mortgage companies, other lenders, and real estate persons.

### Treatment of Policyholders

There were no complaints registered with the Utah Insurance Department for the period covered by this examination.

## **REINSURANCE**

### Assumed

The Company did not assume reinsurance during the period under examination.

### Ceded

The Company entered into a reinsurance agreement with Fidelity National Title Insurance Company of Irvine, California on September 1, 1998. This agreement replaced the Company's previous contract with First American Title Insurance Company. There were no significant changes between the new agreement with Fidelity and the prior agreement with First American. The primary retention amount remained the same at \$200,000. The Company's reinsurance agreement with Fidelity National reinsured risks up to \$1,000,000 or \$2,000,000 in the aggregate.

The Company's reinsurer did not submit to the jurisdiction of the courts of Utah with regards to a reinsurance agreement. The Company did not claim credit against reserves for reinsurance ceded. However, credit would not be possible because of the deficiency.

## **ACCOUNTS AND RECORDS**

Employees who were contracted from Associated Title Company performed the Company's accounting procedures and financial reporting functions. The accounting system consisted of a general ledger, journals, registers, statistical records and other related records. Many of the records were maintained on local area network electronic data processing systems, personal computers, and in hard copy form.

The CPA firm of Arthur Andersen LLP audited the Company in 1996. The CPA firm of Deloitte and Touche audited the Company from 1997 through 1999.

A former board member's name had not been removed from the signature cards on some of the Company's bank accounts. It is recommended the Company ensure the signatories to its cash accounts are appropriate.

A trial balance was extracted from the accrual basis general ledger as of December 31, 1999, and the accounts reconciled to the Company's filed annual statement.

## **FINANCIAL STATEMENTS**

The statements listed below are presented immediately following in this report.

- I. BALANCE SHEET, As of December 31, 1999
- II. STATEMENT OF INCOME, For the Year Ended December 31, 1999
- III. CAPITAL AND SURPLUS ACCOUNT, January 1, 1996 through December 31, 1999.

The Notes to the Financial Statements are an integral part of the Statements.

WESTERN NATIONAL TITLE INSURANCE COMPANY  
BALANCE SHEET

As of December 31, 1999

ASSETS

Bonds	\$ 2,900,667	(1)
Cash on hand and on deposit	361,812	(2)
Title Insurance premiums and fees receivable	42,938	
Interest income due and accrued	<u>41,233</u>	
Total Assets	<u>\$ 3,346,650</u>	

LIABILITIES, SURPLUS, AND OTHER FUNDS

Known claims reserve	\$ 304,444	
Statutory premium reserve	885,697	
Other expenses	42,560	
Taxes, licenses and fees	6,224	
Contingency for federal income tax	<u>31,142</u>	(3)
Total Liabilities	<u>\$ 1,270,067</u>	

Capital paid up	\$ 306,250	
Unassigned funds (surplus)	<u>1,770,333</u>	
Surplus as regards policyholders	<u>\$ 2,076,583</u>	(4)
Total Liabilities, Capital and Surplus	<u>\$ 3,346,650</u>	

Statutory surplus allocation:	
Minimum Adjusted Capital	\$ 1,284,400
Excess Surplus	<u>792,183</u>
Total statutory surplus:	<u>\$ 2,076,583</u>

WESTERN NATIONAL TITLE INSURANCE COMPANY  
STATEMENT OF INCOME

For the Year Ended December 31, 1999

OPERATING INCOME

Title insurance premiums earned	\$ 7,982,787
Loss and loss adjustment expenses incurred	192,817
Operating expenses incurred	7,535,072
Aggregate other operating deductions	<u>2,500</u>
Total Operating Deductions	7,730,389
Net operating gains	<u>252,398</u>

INVESTMENT INCOME

Net investment income earned	176,157
Net realized capital gains and (losses)	<u>170</u>
Net investment gain or (loss)	<u>176,327</u>

OTHER INCOME

Net income before federal income taxes	428,725
Federal income taxes incurred	<u>114,424</u>
Net Income	<u>\$ 314,301</u>

**WESTERN NATIONAL TITLE INSURANCE COMPANY  
CAPITAL AND SURPLUS ACCOUNT**

**January 1, 1996, through December 31, 1999**

	Per Exam <u>1996</u>	<u>1997</u>	<u>1998</u>	Per Exam <u>1999</u>
Surplus as regards policyholders				
December 31, prior year	\$ 1,006,454	\$ 1,081,249	\$ 1,106,741	\$ 1,283,123
Net income	157,132	261,108	243,424	314,301
Net unrealized capital gains/(losses)	( 47,337)	( 35,616)	( 117)	
Dividend distribution	( 35,000)			
Change in supplemental reserves			( 144,051)	313,102
Aggregate write-ins for gains and Losses in surplus		(200,000)	77,126	166,057
Surplus as regards policyholders				
December 31, current year	<u>\$ 1,081,249</u>	<u>\$ 1,106,741</u>	<u>\$ 1,283,123</u>	<u>\$ 2,076,583</u>

## NOTES TO FINANCIAL STATEMENTS

(1) Bonds \$ 2,900,667

The Company reported \$20,600 under "Receivable for securities" which did not meet the definition of qualified asset as described in the Utah Code Annotated (U.C.A.) § 31A-17-201. Since the item was of a bond nature, it was reclassified to "Bonds."

(2) Cash on hand and on deposit \$ 361,813

Cash on hand and on deposit consisted of money market accounts and certificates of deposit with maturity dates of one year or less from the date of acquisition.

(3) Contingency for federal income tax \$ 31,142

The Company reported \$35,525 of excess federal income tax deposits under "Aggregate write-ins for other than invested assets." The item was not identified as qualified asset under U.C.A. § 31A-17-201. It was classified as an offset to "Other reserves" - "Contingency for federal income tax" of \$66,667.

(4) Surplus as regards policyholders \$ 2,076,583

Adjustments made to balances reported by the Company are identified below:

<u>Account</u>	<u>Examination</u>	<u>Company</u>	<u>Change in Surplus</u>	<u>Notes</u>
Bonds	\$ 20,600	\$ -0-	\$ 20,600	(1)
Receivables for Securities	-0-	20,600	(20,600)	
Excess federal income tax dep.	-0-	35,525	(35,525)	
Contingency for fed income tax	\$ 31,142	\$ 66,667	<u>\$ 35,525</u>	(3)
Total Examination Changes:			\$ -0-	
Surplus as regards policyholders - Company			<u>\$ 2,076,583</u>	
Surplus as regards policyholders - Examination			<u>\$ 2,076,583</u>	

The Company's minimum adjusted capital requirement, pursuant to U.C.A. § 31A-17-609, was \$1,284,400. Its surplus as regards policyholders was determined to be \$2,076,583. The Company's excess surplus pursuant to U.C.A. § 31A-1-301(89)(C)(ii), was \$792,183.

## SUMMARY AND RECOMMENDATIONS

Items of significance or special interest contained in this report are summarized as follows:

1. The examination was not provided evidence that the prior financial examination report was presented to the board of directors as required by Utah Code Annotated (U.C.A.) § 31A-2-204(8). **(Corporate Records)**
2. There were no meetings of the board of directors and/or shareholders during 1999. This was not in compliance with Article II (3) of the Company's by-laws. **(Corporate Records)**
3. Reclassification of some balance sheet accounts reported by the Company was necessary. **(Notes to Financial Statements)**
4. A former board member's name had not been removed from the signature cards on some of the Company's bank accounts. It is recommended the Company ensure the signatories to its cash accounts are appropriate. **(Accounts and Records)**
5. The Company's reinsurer did not submit to the jurisdiction of the courts of Utah with regards to a reinsurance agreement. The Company did not claim credit against reserves for reinsurance ceded. However, credit would not be possible because of the deficiency. **(Reinsurance)**
6. The Company was not in compliance with its own by-laws by having less than three members of its board of directors as of December 31, 1999. **(Corporate Records)**
7. The Company did not have fidelity bond coverage. The amount recommended by the National Association of Insurance Commissioners for an insurer of this size was between \$125,000 and \$150,000. The lack of fidelity coverage was disclosed in the prior report of examination. **(Fidelity Bond and Other Insurance)**
8. The Company's minimum adjusted capital requirement, pursuant to U.C.A. § 31A-17-609, was \$1,284,400. Its surplus as regards policyholders was determined to be \$2,076,583. Pursuant to U.C.A. § 31A-1-301(89)(C)(ii), the Company's excess surplus was \$792,183. (Surplus as regards policyholders)

## **CONCLUSION**

The assistance and cooperation extended during the course of the examination by representatives of the Company is sincerely appreciated.

Respectfully Submitted,

Faanu Laufiso  
Financial Examiner  
Utah Insurance Department